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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.D., a Person Coming Under
the Juvenile Court Law.

B293619

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18CCJP02622A)

Plaintiff and Respondent,

v.

E.D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Jean M. Nelson, Judge. Affirmed.

Jamie Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

E.D. (Father) appeals from the juvenile court's jurisdiction and disposition orders made after the court adjudged his daughter, A.D., a dependent under Welfare and Institutions Code section 300.¹ Father contends that the evidence did not support the jurisdictional findings or the removal order. We disagree. As we shall explain, sufficient evidence supported the court's finding that a substantial risk of harm existed to the child because of Father's abuse of drugs and that the child would not be protected without removal from his custody. Accordingly, we affirm.

FACTUAL AND PROCEDURAL HISTORY

The family consists of Father, minor A.D. (born in mid-December 2017) and the child's mother, J.M.² The parents met approximately three years ago at an Alcoholics Anonymous (AA) meeting; they are not married but were living together with the minor.

The family came to the attention of the Department of Children and Family Services (DCFS) on January 17, 2018, when it received an anonymous report that baby A.D. was at risk of harm because her parents had a history of drug abuse, were currently using heroin in the home, and that A.D.'s mother had recently overdosed on heroin.

A DCFS social worker investigated and spoke to the mother, who denied current drug use, and reported that she and Father had been sober for almost a year; she claimed that they stopped using drugs when they discovered that she was pregnant. The mother admitted to a history of heroin abuse but stated that

¹ All statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

² The child's mother is not a party to this appeal.

she was currently attending AA meetings, and agreed to submit to a drug test for DCFS. The mother also stated that she and the baby had been staying at the home of her godmother³ so that she could get help with the baby. The social worker observed that the baby appeared healthy.

Later that day, the mother called the social worker and confessed that she had lied about not recently abusing drugs; she admitted that she had relapsed in January 2018, a couple of weeks after A.D.'s birth, but she also claimed she had been sober for several days. The mother agreed to drug test,⁴ and enroll in a treatment program.

On January 20, 2018, the social worker interviewed Father, who admitted to struggling with drug addiction for two decades; he stated that his use of substances started with his abuse of alcohol and marijuana, followed by abuse of methamphetamine, cocaine, and heroin. He claimed that although he and the baby's mother had a period of sobriety during her pregnancy, they both relapsed because of the stresses of parenting. Father stated that the mother was a heroin user before they met and described them both as " 'addicts fighting this disease.' " He also claimed that he was a "functional [drug] addict" with full-time employment and a supportive family.

Father told the social worker that he was currently in treatment at an informal drug treatment program; he took several prescription medications and was planning to take additional medication to help with heroin withdrawal. He stated that because of his work schedule, he could not drug test.

³ The record alternatively identifies the "godmother" as the mother's aunt and also a family friend.

⁴ Two days later, the mother tested positive for opiates and morphine.

On April 13, 2018, DCFS received another referral alleging that the mother had overdosed on heroin. When the social work investigated, the mother admitted that she and Father were currently abusing drugs.

The social worker interviewed the maternal grandparents, who confirmed that Father used heroin in the family home and also stated the parents had a history of domestic violence.

On April 25, 2018, DCFS filed a section 300 petition under section 300, subdivision (b), alleging that A.D. was at risk of harm because of her parents' history of drug abuse and their inability to care for her.⁵ The court ordered the child detained from the parents and placed her with the godmother.

The parents were re-interviewed for the disposition report. The mother admitted that she used drugs with Father, including during times they were caring for the baby. The mother reported that Father continued to bring drugs into the home even after the DCFS social worker contacted them in January 2018.

During his re-interview, Father claimed he had been sober since mid-April 2018. He disclosed that the baby was never alone in his care. Father believed, however, he could care for the infant and expressed no concern that the stress of parenting would trigger another relapse.

In a September 2018 supplemental report, DCFS informed the court that the mother was enrolled in outpatient drug

⁵ In the b-1 count, DCFS alleges that the mother had a 10-year history of substance abuse, including marijuana and prescription medication, and was a current abuser of heroin, opiates, and morphine and had recently tested positive for opiates and morphine. The b-2 count alleges that Father had a 20-year history of substance abuse, including methamphetamine and cocaine, and was a current abuser of heroin and prescription medication.

treatment. Father was no longer attending any programs, but he had completed a 22-day informal drug treatment program during May 2018. Father also claimed that he was attending individual therapy every week, participating in AA meetings and that he had an AA sponsor whom he spoke to every couple of weeks. Father had missed drug tests in May 2018; tested negative for drugs in June and July 2018; missed a test in early August and tested positive for marijuana in late August, two weeks before the adjudication hearing. DCFS reported that Father visited the child three times per week for between 30 minutes and two hours each visit, but he had missed some visits because of his work. DCFS recommended that the court sustain the allegations in the petition and remove the child from parental custody.

At the September 13, 2018 jurisdictional and dispositional hearing, the mother pled no contest, and the court proceeded to the allegation against Father. Father's counsel asked the court to dismiss the petition and return the child to his custody. The minor's counsel requested the court sustain the count pled against Father, arguing that the child was at risk based on Father's drug abuse history, the child's young age, Father's relapse after the child's birth, and the recent positive drug test for marijuana after he had attended drug treatment. DCFS agreed with minor's counsel, adding that Father's recent marijuana use raised concern because of the evidence that Father's addiction began with his abuse of marijuana and then escalated to other drugs. Counsel also pointed out that Father missed drug tests, that the Father's relapse after the child's birth happened after a year-long period of sobriety, and that his drug use continued for months after DCFS first contacted the family in January 2018.

The court sustained the allegations in the petition, finding that the child was at risk of harm based on the parents'

substance abuse. As to disposition, the court declared A.D. a dependent under section 300, subdivision (b) and removed her from parental custody, and ordered DCFS to provide reunification services. The court found the evidence sufficient to support the removal order based on the child's young age, the history of Father's substance abuse, the relatively short period of his current sobriety, and that the stress of parenthood had triggered the heroin relapse in January 2018. In the court's view, returning the child to Father's custody prematurely, and without the benefits of a parenting course and a full treatment program, would result in another relapse.

Father timely filed an appeal.

DISCUSSION

A. Sufficient Evidence Supports the Dependency Court's Exercise of Jurisdiction

When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452.)

Here, Father does not assert that the court erred in exercising jurisdiction over A.D. based on the section 300 allegation involving the mother. Thus, A.D. will remain a dependent child of the court, and the juvenile court will be able to adjudicate parental rights regardless of the outcome of this appeal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.) Father

acknowledges that the juvenile court has a basis for jurisdiction based on the sustained allegations against the mother. Father, however, contends that substantial evidence did not support the jurisdictional findings that his drug abuse placed A.D. at risk of harm, and he thus requests that this court exercise its discretion to consider the merits of his claim because the jurisdictional finding will prejudice him in future custody or family law proceedings. (See *In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 762–763 [observing that appellate courts may review jurisdictional findings, even though jurisdiction is proper under other jurisdiction allegations when the challenge finding could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings].)

Assuming that the jurisdictional findings will adversely affect Father in future proceedings, we conclude that sufficient evidence supports the jurisdictional findings as to Father.

A juvenile court may determine a child is subject to the court's jurisdiction if it finds by a preponderance of the evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . [or a parent's inability] to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b)(1).) "A jurisdictional finding under section 300, subdivision (b) requires: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness." [Citation.] [Citations.] The third element "effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future"

[Citation.]’ [Citation.] Jurisdiction may be exercised ‘based on . . . a current or future risk.’ ” (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452.)

When asked to assess whether sufficient evidence exists to support a juvenile court’s findings, our task begins and ends with a determination as to whether there is any substantial evidence, to support the juvenile court’s conclusion. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) We do not reweigh, judge the value of, or resolve conflicts in evidence; nor do we exercise independent judgment or evaluate the credibility of witnesses. (*In re B.D.* (2007) 156 Cal.App.4th 975, 986.) Jurisdictional findings are reviewed in a light most favorable to the challenged order; all conflicts and reasonable inferences are resolved in favor of the order. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.) Further, we affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.) The appellant has the burden to show that substantial evidence does not support the finding or the order. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.)

Father contends substantial evidence does not support the court’s exercise of jurisdiction because there is no evidence that his history of drug abuse placed A.D. at substantial risk of current harm within the meaning of the statute. Father points out that by the time of the adjudication he had completed a drug treatment program, was attending AA and individual counseling, and had participated in drug testing and, therefore, the court could not find that he had a substance abuse problem justifying the exercise of dependency jurisdiction. We are not persuaded.

Substantial evidence in the record demonstrates that Father has an ongoing substance abuse problem. Father, a self-described “functional [drug] addict,” had abused substances

for two decades by the time A.D. was born. Although he had allegedly maintained sobriety for nine months before A.D.'s birth, he began to use drugs shortly after to help him cope with the stress of parenting. And even after Father represented to the DCFS social worker in January 2018 that he was again in treatment for his heroin addiction, Father continued to abuse drugs until the child was removed in April 2018. Also, even though Father participated in a 22-day informal drug treatment program in May 2018 and AA meetings, it appeared that Father continued to use substances as evidenced by his positive test for marijuana two weeks before the adjudication hearing.

Based on the evidence before it, the juvenile court reasonably could find that Father had an unresolved substance abuse problem. Indeed, courts have sustained similar allegations based on a totality of evidence demonstrating a parent's habitual drug abuse, including the parent's current use, prior consistent use of substances, and failure to participate in treatment and drug testing. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218–1219 [concluding that the mother's use of cocaine during her pregnancy, her history of drug use, and her failure to consistently drug test and enroll in a substance abuse program justified the court's findings under section 300, subdivision (b) of drug abuse].)

Also, because A.D. is young, Father's substance abuse after her birth was prima facie evidence of his inability to care for the child. A finding of substance abuse by a parent of a child under six years old is prima facie proof of that parent's inability to provide regular care resulting in a substantial risk of harm to the child. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383-1385 [jurisdiction is proper when a child is of " 'such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety' "].)

The focus of dependency proceedings is the protection of minor children. (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491–1492.) The juvenile court need not wait until a child is seriously injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383.) We accordingly affirm the juvenile court’s jurisdictional findings.

**B. No Basis Exists to Reverse the Juvenile Court’s
Disposition Orders Removing the Child from
Father’s Custody**

As relevant here, section 361, subdivision (c)(1), provides that “[a] dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence” that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).) “The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent’s past conduct as well as present circumstances.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) “In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

The same evidence that supports the juvenile court’s jurisdictional findings also supports the juvenile court’s decision to remove A.D. from Father’s custody. (*In re R.V.* (2012) 208 Cal.App.4th 837, 849 [“The jurisdictional findings are *prima facie* evidence the child cannot safely remain in the home.].)

Even assuming that Father had made some progress in dealing with his substance abuse problems by the disposition, given his history of relapses, including one caused by parenting stress, and his positive drug test shortly before the disposition, the court did not err in concluding that Father was not ready to have the child released to his custody. Father did not demonstrate the court abused its discretion when it ordered A.D.'s removal from his parental custody.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.